

REMARKS

In the Office Action mailed May 5, 2005, claims 37, 38 and 43 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In the present amendment, Applicants have amended claims 37, 38 and 43 in order to ensure that no confusion exists as to the subject matter called for in these claims. For example, claim 37 calls for a web with a textured surface that has a surface area that is at least 50% greater than the surface area of the web if the peak areas and the valley areas were planar. As such, any reference to an article relative to the airlaid fibrous web called for in claim 37 has been removed. Claim 37 calls for the peak areas and valley areas to increase the surface area of the web by at least 50% versus what the area would be if the peak areas and valley areas were instead simply planar. Applicants have amended claim 38 and 43 in a manner similar to claim 37. As such, Applicants respectfully submit that claims 37, 38 and 43 do not suffer from any § 112 deficiencies.

Also in the Office Action mailed May 5, 2005, claims 1-47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen et al. (US Patent No. 5,990,377).

Applicants respectfully traverse the §103 (a) rejection to claim 1 in view of Chen. Chen does not disclose or render obvious a textured airlaid fibrous web in which the percentage of composition of material that makes up the peaks is the same as the percentage of composition of material that makes up the valleys. The Office Action of May 5, 2005 cited In re Woodruff, 919 F.2d 1575 (Fed. Cir. 1990) for the proposition that the aforementioned element of claim 1 of Applicants' application does not render

claim 1 patentable because the specification does not contain any disclosure of either the critical nature of the claim element nor any unexpected results arising therefrom (see the last paragraph on page 4 that extends onto page 5 of the Office Action of May 5, 2005). Applicants respectfully submit that in the present case that it is not necessary to show a critical nature of the aforementioned element of claim 1 or any unexpected results arising therefrom in order to demonstrate patentability of claim 1 over Chen. Specifically, the facts and circumstances of In re Woodruff are not applicable in the present situation.

The Board of Patent Appeals and Interferences in In re Woodruff considered the patentability of a patent application directed towards a method of inhibiting fungal growth on refrigerated fresh fruits and vegetables. The patent application called for maintaining vegetables in a modified gaseous atmosphere that had various percentages of compounds, one in particular that was 5-25% carbon monoxide. Prior art that was cited against the claims of the patent application disclosed a similar gaseous atmosphere that included all of the stated compounds in the disclosed ranges but called for a carbon monoxide concentration of about 1-5%.

The Board denied patentability of the Applicants' patent application in In re Woodruff because the cited prior art that disclosed a carbon monoxide concentration of "about 1-5%" allowed for concentrations slightly above 5% and as such encompassed the range of 5-20% in Applicants' patent application. *Id.* at 1577. The Board reasoned that when a dimensional limitation in a claim does not specify a device that performs and operates differently from the prior art, that the patent applicant must show that the

particular dimensional limitation/range is critical, generally by shown that the claimed range achieves unexpected results relative to the prior art range. *Id.* at 1587.

Presently, Applicants' situation is different than In re Woodruff. First, claim 1 of Applicants' application calls for the percentage of composition of material that makes up the peaks to be the same as the percentage of composition of material that makes up the valleys. Chen, in stark contrast, explicitly discloses a web in which more hydrophobic matter is present in the upper most regions than in the depressed regions so that the percentage of composition of hydrophobic matter in the upper most regions is greater than, and not the same as, the percentage of composition of hydrophobic matter in the depressed regions. Chen explicitly discloses that the preferred percentage of the hydrophobic material in the elevated regions is at least about 60%, more specifically at least about 70%, and still more specifically at least about 80% of the total amount deposited (see Chen at column 8, lines 50-57).

Claim 1 of Applicants' application calls for the percentage of composition of material that makes up the peaks to be the same as that of the valleys. In Chen, the percentages of composition are different between the peaks and valleys. The present facts are in contrast to those in In re Woodruff that called for a range of 5-25% that was in fact disclosed in the prior art that called for a range of about 1-5%. As such, the facts of In re Woodruff are not applicable to the present case and there is no requirement for showing a critical range or unexpected results.

Further, the Board in In re Woodruff required a showing that the particular range is critical or a showing of unexpected results due to the fact that the claimed dimensional limitations do not specify a device that preformed and operated differently

than the prior art. Presently, the textured airlaid fibrous web called for in claim 1 of Applicants' application performs and operates differently than Chen. Specifically, if Chen were modified so that the percentage of composition of material making up the upper most portions 3 was the same as the percentage of composition of material making up the depressed regions 4 the entire purpose of Chen and its principle of operation would be frustrated.

Chen is specifically directed towards an improved web that provides a clean, dry feel of the skin of the wearer and also allows for rapid depth wide transport of liquid through the web into an underlying absorbent core (see Chen at column 2, lines 19-25). Chen seeks to achieve this goal by having the upper most regions 3 include a greater percentage of composition of hydrophobic matter than the depressed regions 4. In this manner, liquid will be removed from the upper most regions 3 and transported therefrom so as to provide a dry touch or dry feel to the upper most regions 3. If the depressed regions 4 included the same amount of hydrophobic material as the upper most regions 3, liquid would be repelled therefrom and would potentially be transported back to the upper most regions 3 or onto the skin of the wearer.

Chen explicitly states that the depressed regions 4 should have a "significantly" lower amount of hydrophobic matter in order to achieve the stated goals of the reference. In contrast, claim 1 of Applicants' application calls for the peaks and valley to have the same percentage of composition of material in their make up. Unlike the Applicant's method and prior art in In re Woodward, claim 1 of Applicants' application calls for a web that performs and operates differently then that in Chen because it does not call for a web in which a "significantly" lower amount of hydrophobic amount may be

present in the valleys while a greater amount of hydrophobic matter is present in the peaks.

As such, Applicants' respectfully submit that the present situation is significantly different than that addressed by the Board in In re Woodruff and that it is not necessary in the present case for Applicants' to show the critical nature of the aforementioned claim element or any unexpected results therefrom in order to define over Chen. In order to render claim 1 obvious, Chen must teach or suggest to one having ordinary skill in the art the desirability of modifying Chen so as to achieve the structure set forth in claim 1 of Applicants' application. As stated, Chen explicitly discloses and teaches towards a web in which a significantly larger amount of hydrophobic matter is present in the upper most regions 3 than in the depressed regions 4 in order to provide a dry touch or feel to the upper most regions 3 and aid in transporting liquid therefrom. Chen therefore explicitly teaches way from modification in the manner called for in claim 1 of Applicants' application. Only through improper hindsight analysis with the benefit of having Applicants' disclosure could one have thought to modify Chen so that the percentage of composition of material making up the upper most regions 3 was the same as that making up the depressed regions 4.

As such, Applicants respectfully submit that claim 1 defines over Chen and is in condition for allowance.

Applicants also traverse the §103(a) rejections to claims 28 and 47 for essentially the same reasons as discussed above with respect to claim 1 and submit that claims 28 and 47 define over Chen and are in condition for allowance.

As stated, the Office Action of May 5, 2005 also rejected the dependent claims in the present application (claims 2-27 and 29-46) under 35 USC § 103(a) in view of Chen. These claims depend either directly or indirectly from independent claims 1 and 28 and recite the present invention in varying scope. Applicants have herein discussed the cited reference in relation to claims 1 and 28. The dependent claims 2-27 and 29-46 are similarly distinguishable not only because of the patentability of the independent claims but also because of the combination of the subject matter of each of the dependent claims with their independent claim which makes each claim further distinguishable, and which is not taught or suggested by the cited reference, singly or in combination.

Applicants' respectfully submit that all claims are allowable and that the application is in condition for allowance. Favorable action thereon is respectfully requested. The Examiner is encouraged to contact the undersigned at her convenience should she have any questions concerning this matter or require any additional information.

Respectfully submitted,

DORITY & MANNING,
ATTORNEYS AT LAW, P.A.

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